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AN ACT

RELATING TO ADOPTIONS; ESTABLISHING PROCEDURES FOR ADOPTIONS
ENTERED INTO PURSUANT TO THE FEDERAL INTERCOUNTRY ADOPTION ACT;
PROVIDING FOR BACKGROUND CHECKS ON PERSONS WHO PETITION TO ADOPT
A CHILD; PROVIDING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE
ADOPTION ACT.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-5-1 NMSA 1978 (being Laws 1993, Chapter 77,
Section 128) is amended to read:

"32A-5-1. SHORT TITLE.--Chapter 32A, Article 5 NMSA 1978 may be cited as
the "Adoption Act"."

Section 2. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77,
Section 130, as amended) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "accrediting entity" means an entity that has entered into an
agreement with the United States secretary of state pursuant to the federal
Intercountry Adoption Act and regulations adopted by the United States secretary of
state pursuant to that act, to accredit agencies and approve persons who provide
adoption services related to convention adoptions;

B. "adoptee" means a person who is the subject of an adoption
petition;

C. "adoption service" means:

- (1) identifying a child for adoption and arranging the adoption
of the child;
- (2) securing termination of parental rights to a child or consent
to adoption of the child;
- (3) performing a background study on a child and reporting on
the study;

1 (4) performing a home study on a prospective adoptive parent
2 and reporting on the study;

3 (5) making determinations regarding the best interests of a
4 child and the appropriateness of an adoptive placement for the child;

5 (6) performing post-placement monitoring of a child until an
6 adoption is final; and

7 (7) when there is a disruption before an adoption of a child is
8 final, assuming custody of the child and providing or facilitating the provision of child
9 care or other social services for the child pending an alternative placement of the
10 child;

11 D. "agency" means a person certified, licensed or otherwise specially
12 empowered by law to place a child in a home in this or any other state for the purpose
13 of adoption;

14 E. "agency adoption" means an adoption when the adoptee is in the
15 custody of an agency prior to placement;

16 F. "acknowledged father" means a father who:

17 (1) acknowledges paternity of the adoptee pursuant to the
18 putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

19 (2) is named, with his consent, as the adoptee's father on the
20 adoptee's birth certificate;

21 (3) is obligated to support the adoptee under a written
22 voluntary promise or pursuant to a court order; or

23 (4) has openly held out the adoptee as his own child by
24 establishing a custodial, personal or financial relationship with the adoptee as follows:

25 (a) for an adoptee under six months old at the time of
placement: 1) has initiated an action to establish paternity; 2) is living with the
adoptee at the time the adoption petition is filed; 3) has lived with the mother a
minimum of ninety days during the two-hundred-eighty-day-period prior to the birth or
placement of the adoptee; 4) has lived with the adoptee within the ninety days

1 immediately preceding the adoptive placement; 5) has provided reasonable and fair
2 financial support to the mother during the pregnancy and in connection with the
3 adoptee's birth in accordance with his means and when not prevented from doing so
4 by the person or authorized agency having lawful custody of the adoptee or the
5 adoptee's mother; 6) has continuously paid child support to the mother since the
6 adoptee's birth in an amount at least equal to the amount provided in Section 40-4-
7 11.1 NMSA 1978, or has brought current any delinquent child support payments; or 7)
8 any other factor the court deems necessary to establish a custodial, personal or
9 financial relationship with the adoptee; or

10 (b) for an adoptee over six months old at the time of
11 placement: 1) has initiated an action to establish paternity; 2) has lived with the
12 adoptee within the ninety days immediately preceding the adoptive placement; 3) has
13 continuously paid child support to the mother since the adoptee's birth in an amount at
14 least equal to the amount provided in Section 40-4-11.1 NMSA 1978, or is making
15 reasonable efforts to bring delinquent child support payments current; 4) has contact
16 with the adoptee on a monthly basis when physically and financially able and when not
17 prevented by the person or authorized agency having lawful custody of the adoptee;
18 or 5) has regular communication with the adoptee, or with the person or agency
19 having the care or custody of the adoptee, when physically and financially unable to
20 visit the adoptee and when not prevented from doing so by the person or authorized
21 agency having lawful custody of the adoptee;

22 G. "alleged father" means an individual whom the biological mother
23 has identified as the biological father, but the individual has not acknowledged
24 paternity or registered with the putative father registry as provided for in Section 32A-
25 5-20 NMSA 1978;

H. "consent" means a document:

(1) signed by a biological parent whereby the parent grants
consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to

1 the adoption of a child in its custody;

2 I. "convention adoption" means:

3 (1) an adoption by a United States resident of a child who is a
4 resident of a foreign country that is a party to the Hague Convention on Protection of
5 Children and Co-operation in Respect of Intercountry Adoption; or

6 (2) an adoption by a resident of a foreign country that is a
7 party to the Hague Convention on Protection of Children and Co-operation in Respect
8 of Intercountry Adoption of a child who is a resident of the United States;

9 J. "counselor" means a person certified by the department to conduct
10 adoption counseling in independent adoptions;

11 K. "department adoption" means an adoption when the child is in the
12 custody of the department;

13 L. "former parent" means a parent whose parental rights have been
14 terminated or relinquished;

15 M. "full disclosure" means mandatory and continuous disclosure by the
16 investigator, agency, department or petitioner throughout the adoption proceeding
17 and after finalization of the adoption of all known, nonidentifying information regarding
18 the adoptee, including:

- 19 (1) health history;
- 20 (2) psychological history;
- 21 (3) mental history;
- 22 (4) hospital history;
- 23 (5) medication history;
- 24 (6) genetic history;
- 25 (7) physical descriptions;
- (8) social history;
- (9) placement history; and
- (10) education;

N. "independent adoption" means an adoption when the child is not in

1 the custody of the department or an agency;

2 O. "investigator" means an individual certified by the department to
3 conduct pre-placement studies and post-placement reports;

4 P. "office" means a place for the regular transaction of business or
5 performance of particular services;

6 Q. "parental rights" means all rights of a parent with reference to a
7 child, including parental right to control, to withhold consent to an adoption or to
8 receive notice of a hearing on a petition for adoption;

9 R. "placement" means the selection of a family for an adoptee or
10 matching of a family with an adoptee and physical transfer of the adoptee to the family
11 in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and
12 (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs
13 when the parents consent to the adoption, parental rights are terminated or parental
14 consent is implied;

15 S. "post-placement report" means a written evaluation of the adoptive
16 family and the adoptee after the adoptee is placed for adoption;

17 T. "pre-placement study" means a written evaluation of the adoptive
18 family, the adoptee's biological family and the adoptee;

19 U. "presumed father" means:

20 (1) the husband of the biological mother at the time the
21 adoptee was born;

22 (2) an individual who was married to the mother and either the
23 adoptee was born during the term of the marriage or the adoptee was born within
24 three hundred days after the marriage was terminated by death, annulment,
25 declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to
marry the adoptee's biological mother by a marriage solemnized in apparent
compliance with law, although the attempted marriage is or could be declared invalid
and if the attempted marriage:

1 (a) could be declared invalid only by a court, the
2 adoptee was born during the attempted marriage or within three hundred days after its
3 termination by death, annulment, declaration of invalidity or divorce; or

4 (b) is invalid without a court order, the adoptee was
5 born within three hundred days after the termination of cohabitation;

6 V. "record" means any petition, affidavit, consent or relinquishment
7 form, transcript or notes of testimony, deposition, power of attorney, report, decree,
8 order, judgment, correspondence, document, photograph, invoice, receipt, certificate
9 or other printed, written, videotaped or tape-recorded material pertaining to an
adoption proceeding;

10 W. "relinquishment" means the document by which a parent
11 relinquishes parental rights to the department or an agency to enable placement of
the parent's child for adoption;

12 X. "resident" means a person who, prior to filing an adoption petition,
13 has lived in the state for at least six months immediately preceding filing of the petition
14 for adoption or a person who has become domiciled in the state by establishing legal
15 residence with the intention of maintaining the residency indefinitely; and

16 Y. "stepparent adoption" means an adoption of the adoptee by the
17 adoptee's stepparent when the adoptee has lived with the stepparent for at least one
18 year following the marriage of the stepparent to the custodial parent."

19 Section 3. Section 32A-5-6 NMSA 1978 (being Laws 1993, Chapter 77,
Section 133, as amended) is amended to read:

20 "32A-5-6. AUTHORITY OF THE DEPARTMENT.--

21 A. The department may adopt and promulgate necessary rules and
22 forms for the administration of the Adoption Act, including rules for the assessment of
23 fees. The rules shall not conflict with the provisions of the Adoption Act.

24 B. The department has the authority to provide or request additional
25 information from an investigator or an attorney representing any person involved in
any action filed pursuant to the provisions of the Adoption Act.

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1 C. The department has the authority to intervene in any action filed
2 pursuant to the provisions of the Adoption Act. The intervention shall be effected
3 when legal counsel for the department files a motion for an entry of appearance and
4 an appropriate response.

5 D. The department shall be served by mail by the attorney for the
6 petitioner with copies of all pleadings filed in any action pursuant to the provisions of
7 the Adoption Act, except for copies of the petition for adoption, the request for
8 placement and the decree of adoption, which shall be served as provided in Section
32A-5-7 NMSA 1978.

9 E. The department is authorized to act as an accrediting entity on
10 behalf of the state.

11 F. The department may assess fees for the cost of accrediting an
12 agency or approving a person in matters related to convention adoptions. The
13 department shall establish the amount of the fees by rule and the fees shall be subject
14 to approval by the United States secretary of state. The amount of the fees shall not
exceed the cost of similar services provided by the department."

15 Section 4. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77,
16 Section 153, as amended) is amended to read:

17 "32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and
18 verified by the petitioner and shall allege:

19 A. the full name, age and place and duration of residence of the
20 petitioner and, if married, the place and date of marriage; the date and place of any
21 prior marriage, separation or divorce; and the name of any present or prior spouse;

22 B. the date and place of birth of the adoptee, if known;

23 C. the places where the adoptee has lived within the past three years
24 and the names and addresses of the persons with whom the adoptee has lived, unless
25 the adoptee is in the custody of an agency or the department, in which case the
petitioner shall state the name and address of the agency or the department's county
office from which the child was placed;

1 D. the birth name of the adoptee, any other names by which the
2 adoptee has been known and the adoptee's proposed new name; provided that in the
3 case of an agency adoption, if the petitioner and the biological parents have not
4 agreed to the release of the adoptee's identity to the other person, the birth name and
5 any other names by which the adoptee has been known shall be filed with the court as
6 separate documents at the time the petition is filed;

7 E. where the adoptee is residing at the time of the filing of the petition
8 and, if the adoptee is not living with the petitioner, when the adoptee will commence
9 living with the petitioner;

10 F. that the petitioner desires to establish a parent and child
11 relationship with the adoptee and that the petitioner is a fit and proper person able to
12 care and provide for the adoptee's welfare;

13 G. the existence of any court orders, including placement orders, that
14 are known to the petitioner and that regulate custody, visitation or access to the
15 adoptee, copies of which shall accompany and be attached to the petition as exhibits;

16 H. the relationship, if any, of the petitioner to the adoptee;

17 I. the name and address of the placing agency, if any;

18 J. the names and addresses of all persons from whom consents or
19 relinquishments are required, attaching copies of those obtained and alleging the facts
20 that excuse or imply the consents or relinquishments of the others; provided that if the
21 petitioner has not agreed to the release of his identity to the parent or if the parent
22 has not agreed to the release of his identity to the petitioner, the names and
23 addresses of all persons from whom consents or relinquishments are required shall be
24 filed with the court as separate documents at the time the petition for adoption is filed;

25 K. whether the adoption will be an open adoption, pursuant to the
provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the
results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall

1 allege:

2 (1) the tribal affiliation of the adoptee's parents;
3 (2) what specific actions have been taken and by whom to
4 notify the parents' tribe and the results of the contact, including the names, addresses,
5 titles and telephone numbers of the persons contacted. Copies of any
6 correspondence with the Indian tribe shall be attached as exhibits to the petition; and

7 (3) what specific efforts were made to comply with the
8 placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the
9 placement preferences of the appropriate Indian tribe;

10 N. whether the adoption is subject to the Interstate Compact on the
11 Placement of Children and, if so, a copy of the interstate compact form indicating
12 approval shall be attached as an exhibit to the petition;

13 O. whether the adoptee is foreign-born and, if so, copies of the child's
14 passport and United States visa and of all documents demonstrating that the adoptee
15 is legally free for adoption, including a certificate from the United States secretary of
16 state that certifies that the adoption is a convention adoption;

17 P. whether the adoption is a convention adoption and, if so, the
18 petition shall allege:

19 (1) that the country in which the child has been residing is a
20 party to the Hague Convention on Protection of Children and Co-operation in Respect
21 of Intercountry Adoption;

22 (2) that the agency or person who is providing the adoption
23 service has been approved as an accrediting entity; and

24 (3) that the certificate issued by the United States secretary of
25 state that certifies the adoption as a convention adoption has been filed with the court;
and

Q. the name, address and telephone number of the agency or
individual who has agreed to conduct the post-placement report in accordance with
Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared

1 the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

2 Section 5. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77,
3 Section 163, as amended) is amended to read:

4 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

5 A. The court shall conduct hearings on the petition for adoption so as
6 to determine the rights of the parties in a manner that protects confidentiality. The
7 petitioner and the adoptee shall attend the hearing unless the court for good cause
8 waives a party's appearance. Good cause may include burdensome travel
9 requirements.

10 B. The petitioner shall file all documents required pursuant to the
11 Adoption Act and serve the department with copies of the documents simultaneously
12 with the request for hearing on the petition for adoption.

13 C. If any person who claims to be the biological father of the adoptee
14 has appeared before the court and filed a written petition or response seeking custody
15 and assuming financial responsibility of the adoptee, the court shall hear evidence as
16 to the merits of the petition. If the court determines by a preponderance of the
17 evidence that the person is not the biological father of the adoptee or that the child
18 was conceived through an act of rape or incest, the petition shall be dismissed and the
19 person shall no longer be a party to the adoption. If the court determines that the
20 person is the biological father of the adoptee, the court shall further determine
21 whether the person qualifies as a presumed or acknowledged father whose consent is
22 necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court
23 determines that the person is the biological father, but does not qualify as a presumed
24 or acknowledged father, the court shall adjudicate the person's rights pursuant to the
25 provisions of the Adoption Act.

26 D. If the mother or father of the adoptee has appeared before the
27 court and filed a written petition that alleges the invalidity of the mother's or father's
28 own consent or relinquishment for adoption previously filed in the adoption
29 proceeding, the court shall hear evidence as to the merits of the petition. If the court

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1 determines that the allegations have not been proved by a preponderance of the
2 evidence, the petition shall be dismissed. If the court determines that the allegations
3 of the petition are true, the consent or relinquishment for adoption shall be held
4 invalid, and the court shall determine, in the best interests of the adoptee, the person
5 who shall have custody of the child.

6 E. The petitioner shall present and prove each allegation set forth in
7 the petition for adoption by clear and convincing evidence.

8 F. The court shall grant a decree of adoption if it finds that the
9 petitioner has proved by clear and convincing evidence that:

10 (1) the court has jurisdiction to enter a decree of adoption
11 affecting the adoptee;

12 (2) the adoptee has been placed with the petitioner for a
13 period of ninety days if the adoptee is under the age of one year at the time of
14 placement or for a period of one hundred eighty days if the adoptee is one year of age
15 or older at the time of placement, unless, for good cause shown, the requirement is
16 waived by the court;

17 (3) all necessary consents, relinquishments, terminations or
18 waivers have been obtained;

19 (4) the post-placement report required by Section 32A-5-31
20 NMSA 1978 has been filed with the court;

21 (5) service of the petition for adoption has been made or
22 dispensed with as to all persons entitled to notice pursuant to provisions of Section
23 32A-5-27 NMSA 1978;

24 (6) at least ninety days have passed since the filing of the
25 petition for adoption, except the court may shorten or waive this period of time in cases
in which the child is being adopted by a stepparent, a relative or a person named in
the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA
1978;

(7) the petitioner is a suitable adoptive parent and the best

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1 interests of the adoptee are served by the adoption;

2 (8) if visitation between the biological family and the adoptee is
3 contemplated, that the visitation is in the child's best interests;

4 (9) if the adoptee is foreign-born, the child is legally free for
5 adoption and a certificate issued by the United States secretary of state that certifies
6 the adoption as a convention adoption has been filed with the court;

7 (10) the results of the criminal records check required
8 pursuant to provisions of the Adoption Act have been received and considered;

9 (11) if the adoptee is an Indian child, the requirements set forth
10 in the federal Indian Child Welfare Act of 1978 have been met;

11 (12) when the child is an Indian child, the placement
12 preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement
13 preferences of the appropriate Indian tribes have been followed or, if not followed,
14 good cause for noncompliance has been clearly stated and supported, as required by
15 the federal Indian Child Welfare Act of 1978 and provision has been made to ensure
16 that the Indian child's cultural ties to the Indian child's tribe are protected and fostered;
17 and

18 (13) if the adoption involves the interstate placement of the
19 adoptee, the requirements of the Interstate Compact on the Placement of Children
20 have been met.

21 G. In addition to the findings required by Subsection F of this section,
22 the court in any decree of adoption shall make findings with respect to each allegation
23 of the petition.

24 H. If the court determines that any of the requirements for a decree of
25 adoption pursuant to provisions of Subsections E and F of this section have not been
met or that the adoption is not in the best interests of the adoptee, the court shall deny
the petition and determine, in the best interests of the adoptee, the person who shall
have custody of the child.

I. The decree of adoption shall include the new name of the adoptee

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1 and shall not include any other name by which the adoptee has been known or the
2 names of the former parents. The decree of adoption shall order that from the date of
3 the decree, the adoptee shall be the child of the petitioner and accorded the status set
4 forth in Section 32A-5-37 NMSA 1978.

5 J. A decree of adoption shall be entered within six months of the filing
6 of the petition if the adoptee is under the age of one year at the time of placement or
7 twelve months if the adoptee is one year of age or older at the time of placement,
8 except that the time may be extended by the court upon request of any of the parties
9 or upon the court's own motion for good cause shown.

10 K. A decree of adoption may not be attacked upon the expiration of
11 one year from the entry of the decree; provided, however, that in any adoption
12 involving an Indian child, the Indian child's parent or Indian custodian may petition the
13 court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to
14 invalidate the adoption.

15 L. In any adoption involving an Indian child, the clerk of the court shall
16 provide the secretary of the interior with a copy of any decree of adoption or adoptive
17 placement order and other information as required by the federal Indian Child Welfare
18 Act of 1978."

19 Section 6. Section 32A-5-39 NMSA 1978 (being Laws 1993, Chapter 77,
20 Section 166) is amended to read:

21 "32A-5-39. RECOGNITION OF FOREIGN DECREES.--

22 A. Every judgment terminating the parent-child relationship or
23 establishing the relationship of parent and child by adoption issued pursuant to due
24 process of law by the tribunals of any other jurisdiction within or without the United
25 States shall be recognized in this state, so that the rights and obligations of the parties
as to matters within the jurisdiction of this state shall be determined as though the
judgment were issued by the courts of this state.

B. A convention adoption in a foreign country that is certified by the
United States secretary of state shall be recognized as a final adoption in this state."

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1 Section 7. A new section of the Adoption Act is enacted to read:
2 "APPLICATION OF THE FEDERAL INTERCOUNTRY ADOPTION ACT.--The
3 protections and requirements set forth in the federal Intercountry Adoption Act apply to
4 all proceedings involving a convention adoption."

5 Section 8. A new section of the Adoption Act is enacted to read:

6 "CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

7 A. A nationwide criminal history records check shall be conducted on
8 every person who files a petition to adopt a child. A person who files a petition to
9 adopt a child shall provide the department with a set of fingerprints. The department
10 is authorized to use the set of fingerprints to conduct a background check of the
11 petitioner by submitting the fingerprints to the department of public safety and the
12 federal bureau of investigation.

13 B. Criminal history records obtained by the department pursuant to the
14 provisions of this section are confidential. Criminal history records obtained pursuant
15 to the provisions of this section shall not be used for any purpose other than
16 conducting background checks. Criminal history records obtained pursuant to the
17 provisions of this section and the information contained in those records shall not be
18 released or disclosed to any other person or agency, except pursuant to a court order
19 or with the written consent of the person who is the subject of the records.

20 C. A person who releases or discloses criminal history records or
21 information contained in those records in violation of the provisions of this section is
22 guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section
23 31-19-1 NMSA 1978."

24 Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act
25 is July 1, 2003.

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